

CORRESPONDENCE

(54b)

ORDERS IN COUNCIL AND DESPATCHES IN CONNECTION WITH THE NEGOTIATION OF A TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE DEFINITION AND DEMARCATION OF INTERNATIONAL BOUNDARY BETWEEN CANADA AND THE UNITED STATES.

1506 M.—O. C. 25th Nov., 1907. Approving Report of Minister of the Interior dealing with draft Treaty attached and suggesting certain amendments.

1842 M.—O.C. 9th March, 1908. Nationality of Islands along St. Croix River. Certain suggested amendments accepted by United States. Draft Treaty amended

1945 M.—O. C. 1st April, 1908. Proper person to nominate Arbitrators, &c.

810.—O. C. 14th April, 1908. Dealing with proposed reservation of strip of land on each side boundary line.

1722 M.—O. C. 25th Nov., 1907. (On same subject).

P. C. 1506 M.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 25th November, 1907.

The Committee of the Privy Council have had under consideration a despatch, dated 17th May, 1907, from His Majesty's Ambassador to the United States, referring to the question of the Fresh Water Fisheries in the Great Lakes and other boundary waters, that of the uses of International waters, and that of the delimitation of the Boundaries between Canada and the United States.

The Minister of the Interior to whom the said despatch was referred, submits with respect to the last mentioned question, the following remarks upon the United States draft (copy of which is enclosed by the ambassador) of a treaty for the delimitation of boundaries between Canada and the United States.

That in the draft, the boundary line between Canada and the United States is divided into six sections, each of which is dealt with in a separate article, and as to each of which provision is made for the appointment by the High Contracting Parties of expert geographers or surveyors as Commissioners who shall accurately define and mark that section of the boundary line.

The Minister further submits that, in his judgment, it would be preferable to have, instead of six separate Commissioners, only one, which should be composed of two expert geographers or surveyors, one to be appointed by each party, and which should be empowered to deal with the whole boundary line from the Atlantic to the Pacific Ocean. In his, the Minister's view, the reasons which rendered it necessary that the boundary line, with respect to its definition and demarcation, should, at the time of the treaties of 1814, 1818, 1842 and 1846, be considered in separate parts, do not any longer apply with their original force, since the larger questions of interpretation of the intention of the treaty of 1783 have been determined, and since, under modern conditions, ready access is to be had to all parts of the line. For this last reason, centralized management of all the boundary surveys seems now possible, and

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this, the Minister of the Interior believes, will be advantageous, at least from the Canadian standpoint, as tending to economical management of the surveys and to utilization of the topographical information, which will be acquired, for the general survey of Canada, now in progress. At the same time, he believes that a distinct advantage would be gained by both countries in the uniform treatment, by one Commission, of like questions, on whatever section of the boundary line they present themselves.

The Minister further states that there does not appear to be need of haste in the demarcation of every point of the line. Once the guiding principles for the settlement of questions of disputed jurisdiction have been fixed by the treaty, the determination of the boundary line can be carried on systematically, first marking it in the places where it is most needed. Carried on in such a way, the work should not prove too extensive for management by one commission.

The Minister observes that it should be pointed out that one section of the boundary line is not provided for in the draft, namely, that part of the 49th parallel which lies west of the summit of the Rocky Mountains. This line was agreed upon as the boundary line in that quarter by the treaty of 1846, and was surveyed in part, by a joint Commission in 1859 and following years. In 1902, under an executive agreement between the two governments, a commission was appointed to re-survey it, to renew the monuments and to place additional monuments where such were needed but had not been placed in the original survey, from Lake Superior to the Pacific Ocean. This Commission has almost completed the necessary operations on the section west of the Rocky Mountains to the Straits of Georgia.

The Minister recommends that provision should be made in the treaty for the ratification of this determination when it has been completed and that, in order to complete the marking of the boundary line to the Pacific Ocean, provision should be made for the marking, where necessary and practicable, and for the delineation upon the most recent charts, of the boundary line from the 49th parallel along the middle of the channel which separates Vancouver Island from the mainland and of Haro and Tuca Straits, to the Pacific Ocean, in accordance with the treaties of 1846 and 1871, and the agreement entered into in that behalf at Washington in 1878.

The Minister would further suggest some changes in the wording of the Articles relating to the different sections of the line, as follows:—

In Article I, the definition of the remaining portion of the line lying between the two sections marked by the former Commissioners, should, he, the Minister thinks, be amended to read thus,—

‘The remaining portion of the line, lying between the two above described sections, and upon the location of which, said former commissioners did not agree shall pass through the centre of the Lubec Narrows channel between Campobello Island and the mainland, and, subject to the provisions hereinafter stated, it shall follow, on either side of said Narrows, such courses as will connect with the part of the line agreed upon as aforesaid, and such boundary shall consist of a series of straight lines defined by distances and courses; but inasmuch as differences have arisen in the past as to the location of the line with respect to Pope’s Folly Island above Lubec Narrows and with respect to certain fishing grounds east of the dredged channel, it is agreed that each of the High Contracting Parties . . . ,’ and then, a few lines further on, for the words ‘in accordance with the established claims and rights of possession, both equitable and legal, on either side, over such islands and fisheries’ should be substituted ‘in accordance with the true meaning of the treaty of 1783 and the award of the Commissioners appointed in that behalf under the treaty of Ghent, 1814.’

1. It does not appear essential that the line should follow the centre of a channel. The fishing grounds referred to are, at ordinary tides, covered by the sea, and it might be found by survey that the middle line between the opposite shores would cross them.

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2. In the draft, the fishing grounds are described as lying 'between the dredged channel and the old channel.' For these words it is proposed to substitute 'east of the dredged channel,' for it is contended on the part of Canada that the dredged channel is the old channel.

3. As to the words which it suggested to substitute for 'in accordance with the established claims and rights of possession,' it is submitted that private ownership, or claim to ownership, cannot establish sovereignty, which must be determined in accordance with the existing treaties.

In Article 11, with reference to the line along the St. Croix River, it is provided that 'the line of boundary through said river shall be a water line throughout and shall follow the centre of the main channel, or thalweg, as now existing.' The Minister of the Interior would suggest the substitution of the word 'naturally' instead of 'now' before 'existing,' as the proper location of the boundary line would appear to be determined by the natural course of the river, abstracting the effect of the artificial diversions of the channel which it is possible may exist.

Again, in the same Article, the first rule for the location of the boundary with respect to islands in dispute, it is suggested should read as follows:—

'The nationality of each island in dispute shall be determined by the predominance of the claims established on either side to such island, arising from the exercise of jurisdiction and sovereignty over it.'

The Minister further submits that the occupation and possession of an alien owner of land in either country might be an undisturbed as that of a citizen owner.

Along the St. John River and other boundary waters there may possibly exist islands the sovereignty over which has not been determined by previous Commissions. It is suggested that provision be made for dealing with such islands in the same manner as the islands in the St. Croix River.

It is further suggested—whenever the Commissioners are required, in lakes or rivers, to define the line by buoys, monuments or range marks—that proper discretion be given to the Commissioners by the insertion of the words 'as far as practicable,' since the conditions in any such case might be such that the expenses of marking would be disproportionately great.

The Committee advise that your Excellency be moved to communicate the substance of this minute to His Majesty's Ambassador at Washington, as an expression of the views of the Government of Canada.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

1506—M. (c.)

CANADIAN QUESTIONS.—NORTHERN BOUNDARY OF THE UNITED STATES.

DRAFT TREATY.

The United States of America and His Majesty the King of Great Britain and Ireland and the British Dominions beyond the Seas, Emperor of India, being desirous of providing for the more complete definition and demarcation of the International boundary between the United States and the Dominion of Canada, have for that purpose resolved to conclude a treaty, and to that end have appointed as their Plenipotentiaries :

The President of the United States of America, Elihu Root, Secretary of State of the United States; and His Britannic Majesty, Right Honourable James Bryce, O.M., His Ambassador Extraordinary and Plenipotentiary at Washington ;

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Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following articles :—

Article I.—The Boundary Through Passamaquoddy Bay.

The High Contracting Parties agree that each shall appoint without delay an expert geographer or surveyor to serve as Commissioners for the purpose of more accurately defining and marking the international boundary line between the United States and the Dominion of Canada in the waters of Passamaquoddy Bay from the mouth of the St. Croix River to the Bay of Fundy, and that in defining and marking the said boundary line the Commissioners shall adopt and follow, as closely as may be, the line surveyed and laid down by the Commissioners appointed under Article II of the Treaty of 1892, so far as said Commissioners agreed upon the location of said line, namely :—

(1) From a point at the mouth of the St. Croix River defined by the ranges established by them, by a connected series of six straight lines defined by ranges and cross ranges, to a point between Treat Island and Friar Head, likewise defined by ranges and cross ranges established by them; and also

(2) From a point to Quoddy Roads, defined by the intersection of the range passing through the position of the Beacon of 1886 and Lubec Channel Light, with a range established by them on the west shore of Quoddy Roads along the course of this latter range, which is about $80^{\circ} 35'$ east of true south, into the Bay of Fundy.

In ascertaining the location of the above-described line, the Commissioners shall be controlled by the indications of the range marks and monuments established along its course by said former Commissioners and by the charts upon which the said Commissioners marked the line as tentatively agreed upon by them.

The remaining portion of the line, lying between the two above-described sections, and upon the location of which said former Commissioners did not agree, shall pass through the centre of the Lubec Narrows Channel between Campobello Island and the mainland, and, subject to the provisions hereinafter stated, it shall follow the centre of the most direct channel above Lubec Narrows and of the most direct channel below Lubec Narrows connecting with the parts of the line agreed upon as aforesaid, and such boundary shall consist of a series of straight lines defined by distances and courses; but inasmuch as differences have arisen in the past as to the location of the line with respect to Pope's Folly Island above Lubec Narrows and with respect to certain fishing grounds between the dredged channel and the old channel to the east of it below Lubec Narrows, it is agreed that each of the High Contracting Parties shall present to the other within months after the ratification of this treaty a full printed statement of the evidence, with certified copies of original documents referred to therein which are in its possession, and the arguments upon which it bases its contentions, with a view to arriving at an adjustment of the location of this portion of the line in accordance with the established claims and rights of possession, both equitable and legal, on either side over such island and fisheries. Such agreement, if reached, shall be reduced to writing in the form of a protocol and shall be communicated to the said Commissioners, who shall lay down and mark this portion of the boundary in accordance therewith and as herein provided.

In the event of a failure to agree within months after the date of exchanging the printed statements aforesaid, the question of which government is entitled to jurisdiction over such island and fishing grounds under treaty provisions, and by reason of any rights arising under the recognized principles of international law, shall be referred forthwith for decision upon the evidence and arguments submitted as aforesaid, with such additional statement of facts as may be appropriate, and an

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argument in reply on each side, to an arbitrator to be agreed upon by the two governments, or, in case of a failure to agree, to be appointed by the

, whose decision shall be final, and the line shall be laid down and marked by the said Commissioners in accordance therewith and as herein provided.

The arbitrator shall be requested to deliver, together with his award, a statement of all the costs and expenses incurred by him in connection with the arbitration, which shall forthwith be repaid by the two governments in equal moieties.

It is further agreed that if, under the foregoing provisions, the boundary be located through the channel to the east of the dredged channel above-mentioned, the latter shall be equally free and open for the passage of ships, vessels and boats of both parties.

The entire boundary shall be marked by permanent range marks established on land and, if desirable in the opinion of Commissioners, by buoys in the water, and by such other boundary marks and monuments and at such points as the Commissioners may determine to be necessary; but the said Commissioners shall proceed to define and mark and chart the portion of the line agreed upon by the former Commissioners under the treaty of 1892 aforesaid without waiting for the final determination of the location of the remaining portion of the line.

The course of the said boundary line as defined and marked as aforesaid shall be laid down by said Commissioners on quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose, which charts shall be certified and signed by the Commissioners, and two duplicate originals thereof shall be filed by them with each government; and they shall prepare in duplicate and file with each government a joint report or reports under their hands and seals describing in detail the course and location of the boundary line and the range marks and monuments and buoys marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary from the Bay of Fundy to the mouth of the St. Croix River, as established by treaty provisions and the proceedings thereunder.

Each government shall pay the expenses of its own Commissioner and his assistants, and the cost of marking and monumenting the boundary shall be paid in equal moieties by the two governments.

Article II.—The boundary from the mouth to the source of the St. Croix River.

Whereas Article II of the treaty of 1783 between the United States and Great Britain provides that a line drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy to its source shall be, between these points, the international boundary between the United States and the British possessions in North America, and the identity of the River St. Croix has been determined by the Commissioners appointed for that purpose under Article V of treaty of 1794 between the United States and Great Britain, and the location of the mouth and the source of the said river has been duly established, and the course of said river has been described, surveyed, and charted by said Commissioners, as appears from their joint report, dated the 25th day of October, 1798, and from the chart or plan of said river prepared and filed by them with said report, but said line of boundary along the middle of said river was not laid down by them on said chart or plan, and was not marked or monumented by them along the course of said river; and whereas, pursuant to an additional article, dated March 15th, 1798, supplementing the provisions of the treaty of 1794, above referred to, a monument was erected by joint action of the two governments marking the source of the River St. Croix, but said line of boundary through the River St. Croix has not otherwise been monumented and has never been laid down on charts by joint action of the two Governments; therefore, in order to com-

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plete and render thoroughly effective the demarcation of the boundary described and established as aforesaid.

It is agreed that each of the High Contracting Parties shall appoint, without delay, an expert geographer or surveyor as a Commissioner, and the Commissioners so appointed shall jointly lay down upon accurate modern charts, to be prepared or adopted by them for that purpose, the line of boundary along the middle of the River St. Croix from its mouth to its source as defined and established by the existing treaty provisions and the proceedings thereunder, above referred to, with the agreed understanding, however, that the line of boundary through said river shall be a water line throughout and shall follow the centre of the main channel or thalweg as now existing, except where such course would change, or disturb, or conflict with the national character of an island as already established by mutual recognition and acquiescence in which case the line shall pass on the other side of any such island, following the middle of the channel nearest thereto, or, if the Commissioners find that the national character of any island is in dispute, the question of its nationality shall be submitted by them to their respective governments, with a chart or map certified jointly by said Commissioners, showing the depth and volume of the water at its high and low stages between such island and the river banks on each side and indicating the course of the main channel of the river as it passes such island, together with a descriptive statement by said Commissioners showing the reasons for selecting such channel as the main channel; and in all such cases the High Contracting Parties agree that the location of the boundary with respect to each island in dispute shall be determined and settled in accordance with the following rules:—

(1) The nationality of each island in dispute shall be determined by the predominance of the property rights on either side in such island and of the claims established on either side to such island, arising from the exercise of jurisdiction and sovereignty over it or growing out of undisturbed occupation or possession.

(2) The burden of proving the nationality of any such island shall be upon the party seeking to change the general course of the boundary as above prescribed so as to include such island on its own side of the boundary.

(3) The selection by the Commissioners of the main channel passing such island shall not be conclusive upon the parties hereto and is subject to review, but the burden of providing the main channel to be other than the one selected shall be upon the party proposing the change.

The government proposing such change in the prescribed course of the boundary shall, upon the submission of the question of the nationality of any island or islands by the Commissioners as aforesaid, promptly present to the other government a printed statement, with certified copies of any original documents in its possession referred to therein, showing the grounds and arguments upon which its claim of jurisdiction and ownership with respect to such island rests. Unless an agreement is reached upon the presentation of such statement, the government to which such statement is presented shall within months after its receipt present in reply a similar statement showing the grounds and arguments upon which the claims of the other government are contested. If an agreement is reached between the two governments, it shall be reduced to writing in the form of a protocol and shall be communicated to the said Commissioners, who shall proceed to lay down and mark the boundary so as to leave such island on the side of the boundary to which it is shown to belong, in accordance with the determination of its nationality arrived at as aforesaid.

In the event of a failure by the two governments to come to an agreement within months after the presentation of the printed statements in reply herein above provided for, then the question of the nationality of the islands in dispute shall be referred forthwith for decision under the rules herein above set forth for the determination of that question, and under the recognized principles of international law not inconsistent therewith, and upon the evidence and arguments submitted as

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aforesaid, with such additional statement of facts as may be appropriate, and such further printed argument on each side as may be desired, to an arbitrator to be agreed upon by the two governments, or, in case of a failure to agree, to be appointed by the _____, whose decision shall be final, and the line shall be laid down and marked by the said Commissioners in accordance therewith and as herein provided.

The arbitrator shall be requested to deliver, together with his award, a statement of all the costs and expenses incurred by him in connection with the arbitration, which shall forthwith be repaid by the two governments in equal moieties.

It is further agreed that the said Commissioners shall establish boundary monuments and ranges and buoys marking the course and location of the said line, and showing on which side of the boundary the several islands lying in said river belong, wherever in their judgment it is desirable that the boundary should be so marked.

The charts upon which the boundary is marked as aforesaid shall be in quadruplicate, and shall be certified and signed by said Commissioners, and two duplicate originals thereof shall be filed by them with each government and it shall also be the duty of said Commissioners to prepare in duplicate, and file with each government, a joint report under their hands and seals describing the line so marked by them and the monuments and range marks and buoys marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary from the mouth to the source of the St. Croix River as established by treaty provisions and the proceedings thereunder as aforesaid.

Each government shall pay the expenses of its own Commissioner and his assistants, and the cost of monumenting and marking the boundary shall be paid in equal moieties by the two governments.

Article III.—The boundary from the source of the St. Croix River to the St. Lawrence River.

Whereas the remonumenting of the course of the boundary defined and laid down under the provisions of Articles I and IV of the treaty of August 9, 1842, between the United States and Great Britain has already been undertaken without a formal treaty agreement, but by the joint and concurrent action of the governments of the United States and Great Britain certain monuments between Vermont and Canada having been relocated in 1849, and the portion of said boundary extending between Hall's Stream and the St. Lawrence River in part having been remonumented in recent years and in part is now being remonumented under such action on both sides; and whereas the Commissioners appointed under Article VI. of the treaty of 1842 aforesaid were required to and did mark by monuments the land portion only of said line, and were not required to and did not mark by monuments the portions of the boundary extending along water courses, with the exception that the nationality of the several islands in the St. John River was indicated by monuments erected thereon and a series of monuments was placed by them along the edge of certain of the water courses to fix the general direction of the boundary, most of which monuments have since disappeared, but the entire boundary, including its course through the waterways as well as on land, was charted and marked on maps by the Commissioners under the provisions of Article VI above referred to, and the nationality of the respective islands in the St. John River was determined by them, as appears from the joint report filed by said Commissioners dated June 28, 1847, and the series of maps signed by said Commissioners and filed with their joint report. and whereas the portion of the line through the said waterways has not since been monumented or marked along its course by joint action of the two governments, and the monuments placed by said Commissioners along the land portion of the said boundary require repairing and renewing where such work has not already been done in recent years, and additional or supplementary intermediate monuments at convenient points are

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required under modern conditions: therefore, in order to carry on and complete the work already undertaken as aforesaid, and to re-establish the location of said boundary and render thoroughly effective the demarcation of the said boundary as existent and established.

It is agreed that each of the High Contracting Parties shall appoint an expert geographer or surveyor as a Commissioner, and under the joint direction of such Commissioners the lost or damaged boundary monuments shall be relocated and repaired, and additional monuments and boundary marks shall be established wherever necessary in the judgment of the Commissioners to meet the requirements of modern conditions along the courses of the land portion of the said boundary, and where the said boundary runs through waterways it shall be marked along its course by buoys and monuments in the water and by permanent ranges established on the land, and in such other way and at such points as in the judgment of the Commissioners it is desirable that the boundary be so marked; and it is further agreed that the course of the entire boundary, as described in Article 1 of the treaty of 1842, and as laid down as aforesaid under Article 6 of that treaty, shall be marked by said Commissioners upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose and that said charts so marked shall be certified and signed by them and two duplicate originals thereof shall be filed with each government, and said Commissioners shall also prepare in duplicate and file with each government a joint report or reports describing in detail the course of the boundary so marked by them, and the character and location of the several monuments and boundary marks and ranges marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and laid down under Articles 1 and 6 of the said treaty of 1842.

It is further agreed that each government shall pay the expenses of its Commissioner and his assistants and the cost of marking and monumenting the boundary shall be paid in equal moieties by the two governments.

Article IV.—The boundary from its intersection with the St. Lawrence River to the mouth of Pigeon River.

The High Contracting Parties agree that without delay they will each appoint an expert geographer or surveyor to serve as Commissioners for the purpose of accurately ascertaining and re-establishing the location of the International boundary line, beginning at the point of its intersection with the St. Lawrence River near the forty-fifth parallel of north latitude, as determined under Articles 1 and 6 of the treaty of August 9th, 1842, between the United States and Great Britain, and thence through the Great Lakes and communicating waterways to the mouth of the Pigeon River, at the western shore of Lake Superior, in accordance with the description of such line in Article 2 of the Treaty of Peace between the United States and Great Britain, dated September 3, 1783, and a portion of such line in Article 2 of the Treaty of August 9, 1842, aforesaid, and as described in the joint report, dated 18th June, 1822, of the Commissioners appointed under Article 6 of the treaty of December 24, 1814, between the United States and Great Britain, with respect to a portion of said line and as marked on charts prepared by them and filed with said report, and with respect to the remaining portion of said line as marked on the charts adopted as treaty charts of the boundary under the provisions of Article 2 of the treaty of 1842, above mentioned, with such deviation from said line, however, as may be required on account of the cession by Great Britain to the United States of the portion of Horse Shoe Reef in the Niagara River necessary for the lighthouse erected there by the United States in accordance with the terms of the protocol of a conference held at the British Foreign Office, December 9, 1850, between the representatives of the two Governments and signed by them agreeing upon such cession, and it is agreed that wherever the

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boundary is shown on said charts by a curved line along the water the Commissioners are authorized in their discretion to adopt, in place of such curved line a series of connecting straight lines defined by distances and courses and following generally the course of such curved line, but conforming strictly to the description of the boundary in the existing treaty provisions, and the geographical co-ordinates of the turning points of such line shall be stated by the Commissioners so as to conform to the system of latitudes and longitudes of the charts mentioned below, and the said Commissioners shall mark the course of the entire boundary line located and defined as aforesaid by buoys and monuments in the waterways and by permanent range marks established on the adjacent shores or islands, and by such other boundary marks and at such points as in the judgment of the Commissioners it is desirable that the boundary should be so marked; and the line of boundary defined and located as aforesaid shall be laid down by said Commissioners on accurate modern charts prepared or adopted by them for that purpose, in quadruplicate sets, certified and signed by the Commissioners, two duplicate originals of which shall be filed by them with each government; and the Commissioners shall also prepare in duplicate and file with each government a joint report or reports describing in detail the course of said line and the range marks and buoys marking it, and the character and location of each boundary mark.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and established by treaty provisions and the proceedings thereunder as aforesaid from its intersection with the St. Lawrence River to the mouth of Pigeon River.

Each government shall pay the expenses of its own Commissioner and his assistants, and the cost of marking and monumenting the boundary shall be paid in equal moieties by the two governments.

Article V.—The boundary from the mouth of Pigeon River to the Northwesternmost point of the Lake of the Woods.

In order to complete and perfect the demarcation of the international boundary line between the United States and the Dominion of Canada from the mouth of Pigeon river, at the western shore of Lake Superior to the northwesternmost point of the Lake of the Woods, which boundary is defined in Article 2 of the Treaty of Peace between the United States and Great Britain dated September 3, 1783, and in Article 2 of the treaty of August 9, 1842, between the United States and Great Britain wherein is defined also the location of the said northwesternmost point of the Lake of the Woods and the greater part of the said boundary is marked on charts covering that section of the boundary adopted as treaty charts of the boundary under the provisions of Article 2 of the treaty of 1842 aforesaid, but has never been actually located or monumented along its course by joint action of the two governments and no joint survey of its course has been made since the survey under the direction of the Commissioners appointed under Article 7 of the treaty of December 24, 1814, between the United States and Great Britain, under whose directions the charts above mentioned were prepared.

It is agreed that each of the High Contracting Parties shall appoint, without delay, an expert geographer or surveyor as Commisisoners, who shall re-establish and fix the actual location of the said entire boundary described and charted as aforesaid and designate the side of the boundary upon which each island adjacent to the boundary belongs, it being mutually understood that the boundary, so far as practicable, shall be a water line and shall not intersect islands lying along its course, and the Commissioners shall mark such boundary along its course by monuments and buoys and range marks, and such other boundary marks as the Commissioners may determine and at such points as in their judgment it is desirable that the boundary shall be so marked; and it is further agreed that the course of the entire boundary

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as described and laid down as aforesaid and as monumented by said Commissioners shall be marked by them upon quadruplicate sets of accurate modern charts prepared or adapted by them for that purpose, and that said charts so marked shall be certified and signed by them, and two duplicate originals thereof shall be filed with each government, and said Commissioners shall also prepare in duplicate and file with each government a joint report or reports describing in detail the course of the boundary so marked by them and the character and location of the several monuments and boundary marks and ranges marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and established under the aforesaid treaties from the mouth of Pigeon River to the northwesternmost point of the Lake of the Woods.

It is further agreed that each government shall pay the expenses of its own commissioner and his assistants, and that the cost of marking and monumenting the boundary shall be paid in equal moieties by the two governments.

Article VI.—The boundary from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains.

In order to complete and render thoroughly effective the demarcation of the international boundary between the United States and the Dominion of Canada from the northwesternmost point of the Lake of the Woods to the summit of the Rocky mountains, which boundary, according to existing treaties runs due south from said northwesternmost point to the forty-ninth parallel of north latitude and thence along that parallel to the summit of the Rocky Mountains, and has been surveyed and charted and monumented as appears from the series of twenty-four sectional maps covering this portion of the boundary prepared and filed by the joint Commission appointed for that purpose by joint action of the two governments in 1872.

It is agreed that each of the High Contracting Parties shall appoint an expert geographer or surveyor as Commissioner and under the joint direction of such Commissioners lost or damaged monuments along the course of said boundary shall be relocated and repaired and additional monuments and boundary marks shall be established wherever necessary, in the judgment of the Commissioners, to meet the requirements of modern conditions and to render more effective the demarcation of the existent boundary established under the treaty provisions and proceedings thereunder as aforesaid; and it is further agreed that in carrying out these provisions the said Commissioners shall observe the agreement stated in the protocol of the final meeting, dated May 29, 1878, of the Joint Commission aforesaid, which is as follows:

‘2. In the intervals between the monuments along the parallel of latitude, it is agreed that the line has the curvature of a parallel of 49° north latitude; and that such characteristic shall determine all questions that may hereafter arise with reference to the position of the boundary at any point between neighbouring monuments.

‘3. It is further agreed that in the event of any of the said three hundred and eighty-eight monuments or marks being obliterated beyond the power of recognition the lost site or sites shall be recovered by their recorded position relatively to the next neighbouring unobliterated mark or marks.’

It is further agreed that the said Commissioners shall mark upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose the location of such additional boundary monuments and marks as shall be established by them along the course of the said boundary, and two duplicate originals thereof shall be filed with each government, and said Commissioners shall also prepare in duplicate and file with each government a joint report describing in detail the work done by them in replacing and repairing lost or damaged monuments and the character and location of the several monuments and boundary marks placed by them along said boundary.

The monuments and marks so established and described by them shall be taken and deemed to be the boundary monuments at the points indicated along the inter-

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national boundary as defined by treaty provisions and the proceedings thereunder from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains.

It is further agreed that each government shall pay the expenses of its own Commissioner and his assistants, and that the cost of marking and monumenting the boundary shall be paid in equal moieties by the two governments.

Article VII.—General Provisions.

The Commissioners appointed under the provisions of this treaty shall proceed without delay to perform the duties assigned to them, but each Commissioner shall before entering upon his duties, make oath in writing that he will impartially and faithfully perform his duties as such Commissioner.

In case a vacancy occurs in any of the Commissions constituted by this treaty, by reason of the death, resignation, or other disability of a Commissioner before the work of such Commission is completed, the vacancy so caused shall be filled forthwith by the appointment of another Commissioner of the party on whose side the vacancy occurs, and the Commissioner so appointed shall have the same powers and be subject to the same duties and obligations as the Commissioner originally appointed.

If a dispute or difference should arise about the location or demarcation of any portion of the boundary covered by the provisions of this treaty and an agreement thereto is not reached by the Commissioners charged herein with locating and marking such portion of the line, they shall make a report in writing jointly to both governments or severally each to his own government, setting out fully the questions in dispute and the differences between them, but such Commissioners shall, nevertheless, proceed to carry on and complete as far as possible the work herein assigned to them with respect to the remaining portions of the line.

Article VIII.

This treaty shall be ratified by the President of the United States by and with the advice and consent of the Senate thereof and by His Britannic Majesty, and the ratifications shall be exchanged in Washington as soon as practicable.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington, the day of in the year of our Lord, one thousand nine hundred and seven.

P.C. 1842 M.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 9th March, 1908.

The Committee of the Privy Council have had under consideration a despatch, dated 29th January, 1908, from His Majesty's Ambassador to the United States, transmitting a communication from Hon. Elihu Root, Secretary of State of the United States, in reply to a Minute of the Privy Council, approved by the Governor General on the 27th November, 1907, dealing with a draft treaty, prepared in the United States Department of State, for the more complete definition and demarcation of the international boundary between the United States and the Dominion of Canada, and proposing certain amendments to the wording of the draft.

The Minister of the Interior, to whom the said despatch was referred, states that Mr. Root assents, with some qualification, to all the amendments proposed in the minute, save one, and has embodied them, with some further suggestions, in a new draft which was enclosed in his communication to Mr. Bryce.

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The exception referred to is the proposal made in the minute that the provisions of Article II with respect to the determination of the nationality of islands in dispute along the St. Croix River should be applied as well in the waters dealt with in the subsequent articles. Mr. Root points out that Article II differs from the following articles in that it provides for the delineation and demarcation, *de novo*, of a line which has not hitherto been either marked on the ground or drawn upon charts.

There is therefore possibility of doubt as to nationality of islands along the St. Croix River, whereas there should not be this doubt along those parts of the line which have already been laid down on charts by joint action of the two governments. He believes that the location of the line where it has heretofore been laid down can be accurately ascertained, and if so the Commissioners should not be permitted to change its location.

The Minister submits that it was not intended in the minute of November 27th that the Commissioners should be given power to change the location of the line where the evidence of the former survey was sufficient to determine the nationality of an island, but merely to provide for the opposite case. He believes, however, that such case is sufficiently covered by the general provisions of Article IX of the new draft for submission to the two governments for decision of any case of disagreement between the Commissioners. He would further observe that, since this provision is now placed among the general provisions of the treaty, it might be well to guard the special provisions for arbitration contained in Articles I and II by adding at the end of Article IX. the words, 'but without prejudice to the special provisions contained in Articles I and II regarding arbitration.'

With reference to the amendment suggested in the minute to that paragraph of Article I which deals with the location of the line on either side of the Lubic Narrows that the words 'in accordance with the established claims and rights of possession both equitable and legal on either side over such islands and fisheries' should be replaced by the words 'in accordance with the true meaning of the treaty of 1783 and the award of the Commissioners appointed in that behalf under the Treaty of Ghent, 1814,' Mr. Root assents to the proposed amendment, but suggests the addition of the words 'it being understood that any action by either or both governments or their representatives or by the local governments on either side of the line whether prior or subsequent to such treaties and award, tending to aid in the interpretation thereof, shall be taken into consideration in determining their true intent and meaning.'

The Minister submits that he sees no objection to this addition, except as regards the words 'or their representatives.' The word 'representatives' may carry a somewhat wide meaning, and it would not appear altogether desirable to recognize the power of an officer to bind his government in such a matter, unless he were a representative having authority in that behalf.

Since the act of a representative having such authority would be in effect the act of his government, the words 'or their representatives' appear unnecessary.

Articles VII and VIII of the new draft provide for the parts of the boundary line from the summit of the Rocky Mountains to the Gulf of Georgia, and from the 49th parallel to the Pacific Ocean respectively, provision for the delineation and demarcation of these parts of the boundary line having been added in accordance with the suggestions of the minute of 27th November.

These additional articles are similar in tenor to the previous articles, and provide for no change in the existing boundary except as regards a certain point of the boundary line from the 49th parallel to the Pacific Ocean. Whereas the charts prepared at the conference at Washington held on March 10th, 1873, in pursuance of the provisions of the treaty of May 8th, 1871, and the award of the Emperor of Germany thereunder, define the boundary line at a certain point as following a curved course passing through the middle point of the channel between Saturna Island and Patos

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Island. It is proposed in the present draft to substitute for this curved line a line approximately north and south passing through the said middle point of the channel and intersecting the adjacent straight portions of the boundary line.

The Minister begs to report that he sees no objection to this change, and having carefully considered the whole of the new draft, he would recommend its acceptance, if amended as suggested above by omission of the words 'or their representatives' in Article I.

With reference to the filling of the blanks in Articles I and II, he would respectfully suggest that the President of The Hague Court of Arbitration be named as nominator of the arbitrator in case of final disagreement between the governments, and the period allowed for preparation of statements to be in each case six months.

The Committee on the recommendation of the Minister of the Interior advise that a copy of this minute be transmitted to His Majesty's Ambassador at Washington as an expression of the views of Your Excellency's advisors.

All of which is respectfully submitted.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

1842 M. (c.)

CANADIAN QUESTIONS.—NORTHERN BOUNDARY OF THE UNITED STATES.

DRAFT TREATY (AMENDED).

The United States of America and His Majesty the King of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of providing for the more complete definition and demarcation of the international boundary between the United States and the Dominion of Canada, have for that purpose resolved to conclude a treaty, and to that end have appointed as their Plenipotentiaries:—

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, Right Honourable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following articles:—

Article I.—The Boundary Through Passamaquoddy Bay.

The High Contracting Parties agree that each shall appoint, without delay, an expert geographer or surveyor to serve as Commissioners for the purpose of more accurately defining and marking the international boundary line between the United States and the Dominion of Canada in the waters of Passamaquoddy Bay from the mouth of the St. Croix River to the Bay of Fundy, and that in defining and marking said boundary line the Commissioners shall adopt and follow, as closely as may be, the line surveyed and laid down by the Commissioners appointed under Article II of the treaty of 1892, so far as said Commissioners agreed upon the location of said line, namely:—

(1) From a point at the mouth of the St. Croix River defined by the ranges established by them, by a connected series of six straight lines defined by ranges and cross ranges, to a point between Treat Island and Friar Head, likewise defined by ranges and cross ranges established by them; and also

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(2) From a point in Quoddy Roads, defined by the intersection of the range passing through the position of the Beacon of 1886 and Lubec Channel Light, with a range established by them on the west shore of Quoddy Roads along the course of this latter range, which is about $80^{\circ} 35'$ east of true south, into the Bay of Fundy.

In ascertaining the location of the above-described line, the Commissioners shall be controlled by the indications of the range marks and monuments established along its course by said former Commissioners and by the charts upon which the said Commissioners marked the line as tentatively agreed upon by them.

The remaining portion of the line lying between the two above-described sections, and upon the location of which said former Commissioners did not agree, shall pass through the centre of the Lubec Narrows Channel between Campobello Island and the mainland, and; subject to the provisions hereinafter stated, it shall follow on either side of the said Narrows such courses as will connect with the parts of the line agreed upon as aforesaid, and such boundary shall consist of a series of straight lines defined by distances and courses; but inasmuch as differences have arisen in the past as to the location of the line with respect to Pope's Folly Island above Lubec Narrows and with respect to certain fishing grounds east of the dredged channel below Lubec Narrows, it is agreed that each of the High Contracting Parties shall present to the other within

months after the ratification of this treaty a full printed statement of the evidence, with certified copies of original documents referred to therein which are in its possession, and the arguments upon which it bases its contentions, with a view to arriving at an adjustment of the location of this portion of the line in accordance with the true intent and meaning of the provisions relating thereto of the treaties of 1783 and 1814 between the United States and Great Britain, and the award of the Commissioners appointed in that behalf under the treaty of 1814; it being understood that any action by either or both governments or their representatives or by the local governments on either side of the line whether prior or subsequent to such treaties and award tending to aid in the interpretation thereof, shall be taken into consideration in determining their true intent and meaning. Such agreement, if reached, shall be reduced to writing in the form of a protocol and shall be communicated to the said Commissioners, who shall lay down and mark this portion of the boundary in accordance therewith and as herein provided.

In the event of a failure to agree within months after the date of exchanging the printed statements aforesaid, the question of which government is entitled to jurisdiction over such island and fishing grounds under treaty provisions and proceedings thereunder, interpreted in accordance with their true intent and meaning as above provided and by reason of any rights arising under the recognized principles of international law, shall be referred forthwith for decision upon the evidence and arguments submitted as aforesaid, with such additional statement of facts as may be appropriate, and an argument in reply on each side, to an arbitrator to be agreed upon by the two governments or in case of a failure to agree, to be appointed by the whose decision shall be final, and the line shall be laid down and marked by the said Commissioners in accordance therewith and as herein provided.

The arbitrator shall be requested to deliver, together with his award, a statement of all the costs and expenses incurred by him in connection with the arbitration, which shall forthwith be repaid by the two governments in equal moieties.

It is further agreed that if, under the foregoing provisions, the boundary be located through the channel to the east of the dredged channel above mentioned, the latter shall be equally free and open for the passage of ships, vessels and boats of both parties.

The entire boundary shall be marked by permanent range marks established on land and, if desirable in the opinion of Commissioners, by buoys in the water, and by such other boundary marks and monuments and at such points as the Commissioners

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may determine to be necessary; but the said Commissioners shall proceed to define and mark and chart the portion of the line agreed upon by the former Commissioners under the treaty of 1892 aforesaid without waiting for the final determination of the location of the remaining portion of the line.

The course of the said boundary line as defined and marked as aforesaid shall be laid down by said Commissioners on quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose, which charts shall be certified and signed by the Commissioners, and two duplicate originals thereof shall be filed by them with each government; and they shall also prepare in duplicate and file with each government a joint report or reports under their hands and seals describing in detail the course and location of the boundary line and the range marks and monuments and buoys marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary from the Bay of Fundy to the mouth of the St. Croix River, as established by treaty provisions and the proceedings thereunder.

Article II.—The boundary from the mouth to the source of the St. Croix River.

Whereas Article II of the treaty of 1783 between the United States and Great Britain provides that a line drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy to its source shall be, between those points, the international boundary between the United States and the British possessions in North America, and the identity of the River St. Croix has been determined by the Commissioners appointed for that purpose under Article V of the treaty of 1794 between the United States and Great Britain, and the location of the mouth and the source of said river has been duly established, and the course of said river has been described, surveyed, and charted by said Commissioners, as appears from their joint report dated the 25th day of October, 1798, and from the chart or plan of said river prepared and filed by them with said report, but said line of boundary along the middle of said river was not laid down by them on said chart or plan, and was not marked or monumented by them along the course of said river; and whereas, pursuant to an additional article, dated March 15, 1798, supplementing the provisions of the treaty of 1794 above referred to, a monument was erected by joint action of the two governments, marking the source of the River St. Croix, but said line of boundary through the River St. Croix has not otherwise been monumented and has never been laid down on charts by joint action of the two governments; therefore, in order to complete and render thoroughly effective the demarcation of the boundary described and established as aforesaid, it is agreed that each of the High Contracting Parties shall appoint without delay, an expert geographer or surveyor as a Commissioner, and the Commissioners so appointed shall jointly lay down upon accurate modern charts, to be prepared or adopted by them for that purpose, the line of boundary along the middle of the River St. Croix from its mouth to its source as defined and established by the existing treaty provisions and the proceedings thereunder, above referred to, with the agreed understanding, however, that the line of boundary through said river shall be a water line throughout and shall follow the centre of the main channel or thalweg as naturally existing, except where such course would change, or disturb, or conflict with the national character of an island as already established by mutual recognition and acquiescence, in which case the line shall pass on the other side of any such island, following the middle of the channel nearest thereto, or if the Commissioners find that the national character of any island is in dispute, the question of its nationality shall be submitted by them to their respective governments, with a chart or map certified jointly by said Commissioners, showing the depth and volume of the water at its high and low stages between such island and the river banks on each side and indi-

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cating the course of the main channel of the river as it passes such island, together with a descriptive statement by said Commissioners showing the reasons for selecting such channel as the main channel; and in all such cases the High Contracting Parties agree that the location of the boundary with respect to each island in dispute shall be determined and settled in accordance with the following rules:—

(1) The nationality of each island in dispute shall be determined by the predominance of the claims established on either side to such island, arising from the exercise of jurisdiction and sovereignty over it, including such exercise of jurisdiction by the local governments on either side of the line.

(2) The burden of proving the nationality of any such island shall be upon the party seeking to change the general course of the boundary as above prescribed so as to include such island on its own side of the boundary.

(3) The selection by the Commissioners of the main channel passing such island shall not be conclusive upon the parties hereto and is subject to review, but the burden of proving the main channel to be other than the one selected shall be upon the party proposing the change.

The government proposing such change in the prescribed course of the boundary shall, upon the submission of the question of the nationality of any island or islands by the Commissioners as aforesaid, promptly present to the other government a printed statement, with certified copies of any original documents in its possession referred to therein, showing the grounds and arguments upon which its claim of jurisdiction and ownership with respect to such island rests. Unless an agreement is reached upon the presentation of such statement, the government to which such statement is presented shall within _____ months after its receipt present in reply a similar statement showing the grounds and arguments upon which the claims of the other government are contested. If an agreement is reached between the two governments, it shall be reduced to writing in the form of a protocol and shall be communicated to the said Commissioners, who shall proceed to lay down and mark the boundary so as to leave such island on the side of the boundary to which it is shown it belongs, in accordance with the determination of its nationality arrived at as aforesaid.

In the event of a failure by the two governments to come to an agreement within _____ months after the presentation of the printed statements in reply hereinabove provided for, then the question of the nationality of the islands in dispute shall be referred forthwith for decision under the rules hereinabove set forth for the determination of that question, and under the recognized principles of international law not inconsistent therewith, and upon the evidence and arguments submitted as aforesaid, with such additional statement of facts as may be appropriate, and such further printed argument on each side as may be desired, to an arbitrator to be agreed upon by the two Commissioners, or, in case of a failure to agree, to be appointed by the _____ whose decision shall be final, and the line shall be laid down and marked by the said Commissioners in accordance therewith and as herein provided.

The arbitrator shall be requested to deliver, together with his award, a statement of all the costs and expenses incurred by him in connection with the arbitration, which shall forthwith be repaid by the two governments in equal moieties.

It is further agreed that the said Commissioners shall establish boundary monuments and ranges and buoys marking the course and location of the said line, and showing on which side of the boundary the several islands lying in said river belong, wherever in their judgment it is desirable that the boundary be so marked.

The charts upon which the boundary is marked as aforesaid shall be in quadruplicate and shall be certified and signed by said Commissioners, and two duplicate originals thereof shall be filed by them with each government, and it shall also be the duty of said Commissioners to prepare in duplicate, and file with each government, a joint

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report under their hands and seals describing the line so marked by them and the monuments and range marks and buoys marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary from the mouth to the source of the St. Croix River as established by treaty provisions and the proceedings thereunder as aforesaid.

Each Government shall pay the expenses of its own Commissioner and his assistants, and the cost of monumenting and marking the boundary shall be paid in equal moieties by the two governments.

Article III.—The Boundary from the Source of the St. Croix River to the St. Lawrence River.

Whereas the remonumenting of the course of the boundary defined and laid down under the provisions of Articles I and VI of the Treaty of August 9, 1842, between the United States and Great Britain has already been undertaken without a formal treaty agreement, but by the joint and concurrent action of the governments of the United States and Great Britain, certain monuments between Vermont and Canada having been relocated in 1849, and the portion of said boundary extending between Hall's Stream and the St. Lawrence River in part having been remonumented in recent years and in part is now being remonumented under such action on both sides; and whereas the Commissioners appointed under Article VI of the treaty of 1842 aforesaid were required to and did mark by monuments the land portion only of the said line, and were not required to and did not mark by monuments the portion of the boundary extending along water courses with the exception that the nationality of the several islands in the St. John River was indicated by monuments erected thereon and a series of monuments was placed by them along the edge of certain of the water courses to fix the general direction of the boundary, most of which monuments have since disappeared, but the entire boundary, including its course through the waterways as well as on land, was chartered and marked on maps by said Commissioners under the protection of Article VI above referred to, and the nationality of the respective islands in the St. John River was determined by them, as appears from the joint report filed by said Commissioners, dated June 28th, 1847, and the series of maps signed by said Commissioners and filed with their joint report; and whereas the portion of the line through said waterways has not since been monumented or marked along its course by joint action of the two governments, and the monuments placed by said Commissioners along the land portion of the said boundary require repairing and renewing where such work has not already been done in recent years, and additional or supplementary intermediate monuments at convenient points are required under modern conditions; therefore, in order to carry on and complete the work already undertaken as aforesaid, and to re-establish the location of said boundary and render thoroughly effective the demarcation of the said boundary as existent and established.

It is agreed that each of the High Contracting Parties shall appoint an expert geographer or surveyor as a Commissioner, and under the joint direction of such Commissioners the lost or damaged boundary monuments shall be relocated and repaired, and additional monuments and boundary marks shall be established wherever necessary in the judgment of the Commissioners to meet the requirements of modern conditions along the course of the land portion of the said boundary, and where the said boundary runs through waterways it shall be marked along its course by buoys and monuments in the water so far as may be practicable and by permanent ranges established on the land, and in such other way and at such points as in the judgment of the Commissioners it is desirable that the boundary be so marked; and it is further agreed that the course of the entire boundary, as described in Article I of the treaty of 1842 and as laid down as aforesaid under Article VI of that treaty, shall be marked by said Commissioners upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose, and that said charts so marked shall

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be certified and signed by them and two duplicate originals thereof shall be filed with each government, and said Commissioners shall also prepare in duplicate and file with each government a joint report or reports describing in detail the course of the boundary so marked by them, and the character and location of the several monuments and boundary marks and ranges marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and laid down under Articles I and VI of the said treaty of 1842.

Article IV.—The boundary from its intersection with the St. Lawrence River to the mouth of Pigeon River.

The High Contracting Parties agree that the existing International Waterways Commission, constituted by concurrent action of the United States and the Dominion of Canada and composed of three Commissioners on the part of the United States and three Commissioners on the part of the Dominion of Canada, is hereby authorized and empowered to ascertain and re-establish accurately the location of the international boundary line beginning at the point of its intersection with the St. Lawrence River near the forty-fifth parallel of north latitude, as determined under Articles I and VI of the treaty of August 9, 1842, between the United States and Great Britain, and thence through the Great Lakes and communicating waterways to the mouth of Pigeon River, at the western shore of Lake Superior, in accordance with the description of such line in Article II. of the Treaty of Peace between the United States and Great Britain, dated September 3, 1783, and of a portion of such line in Article II of the treaty of August 9, 1842, aforesaid, and as described in the joint report, dated June 18, 1882, of the Commissioners appointed under Article VI of the treaty of December 24, 1814, between the United States and Great Britain, with respect to a portion of said line and as marked on charts prepared by them and filed with said report, and with respect to the remaining portion of said line as marked on the charts adopted as treaty charts of the boundary under the provisions of Article II of the treaty of 1842, above mentioned, with such deviation from said line, however, as may be required on account of the cession by Great Britain to the United States of the portion of Horse Shoe Reef in the Niagara River necessary for the lighthouse erected there by the United States in accordance with the terms of the protocol of a conference held at the British Foreign Office, December 9, 1850, between the representatives of the two governments and signed by them agreeing upon such cession; and it is agreed that wherever the boundary is shown on said charts by a curved line along the water the Commissioners are authorized in their discretion to adopt, in place of such curved line, a series of connecting straight lines defined by distances and courses and following generally the course of such curved line, but conforming strictly to the description of the boundary in the existing treaty provisions, and the geographical co-ordinates of the turning points of such line shall be stated by said Commissioners so as to conform to the system of latitudes and longitudes of the charts mentioned below, and the said Commissioners shall mark the course of the entire boundary line located and defined as aforesaid, by buoys and monuments in the waterways, so far as may be practicable, and by permanent range marks established on the adjacent shores or islands, and by such other boundary marks and at such points as in the judgment of the Commissioners it is desirable that the boundary should be so marked; and the line of the boundary defined and located as aforesaid shall be laid down by said Commissioners on accurate modern charts prepared or adopted by them for that purpose, in quadruplicate sets, certified and signed by the Commissioners, two duplicate originals of which shall be filed by them with each government; and the Commissioners shall also prepare in duplicate and file with each government a joint report or reports describing in detail the course

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of said line and the range marks and buoys marking it, and the character and location of each boundary mark.

The majority of the Commissioners shall have power to render a decision.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and established by treaty provisions and the proceedings thereunder as aforesaid from its intersection with the St. Lawrence River to the mouth of Pigeon River.

Article V.—The boundary from the mouth of Pigeon River to the northwesternmost point of the Lake of the Woods.

In order to complete and perfect the demarcation of the international boundary line between the United States and the Dominion of Canada from the mouth of Pigeon River at the western shore of Lake Superior, to the northwesternmost point of the Lake of the Woods, which boundary is defined in Article II of the Treaty of Peace between the United States and Great Britain dated September 3, 1783, and in Article II of the Treaty of August 9, 1842, between the United States and Great Britain, wherein is defined also the location of the said northwesternmost point of the Lake of the Woods, and the greater part of the said boundary is marked on charts covering that section of the boundary adopted as treaty charts of the boundary under the provisions of Article II of the treaty of 1842 aforesaid, but has never been actually located or monumented along its course by joint action of the two governments, and no joint survey of its course has been made since the survey under the direction of the Commissioners appointed under Article VII of the Treaty of December 24, 1814, between the United States and Great Britain, under whose direction the charts above mentioned were prepared.

It is agreed that each of the High Contracting Parties shall appoint, without delay, an expert geographer or surveyor as Commissioners, who shall re-establish and fix the actual location of said entire boundary described and charted as aforesaid, and designate the side of the boundary upon which each island adjacent to the boundary belongs, it being mutually understood that the boundary, so far as practicable, shall be a water line and shall not intersect islands lying along its course, and the Commissioners shall mark such boundary along its course by monuments and buoys, so far as may be practicable, and range marks, and such other boundary marks as the Commissioners may determine, and at such points as in their judgment it is desirable that the boundary shall be so marked: and it is further agreed that the course of the entire boundary as described and laid down as aforesaid and as monumented by said Commissioners shall be marked by them upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose, and that said charts so marked shall be certified and signed by them and two duplicate originals thereof shall be filed with each government, and said Commissioners shall also prepare in duplicate and file with each government a joint report or reports describing in detail the course of the boundary so marked by them and the character and location of the several monuments and boundary marks and ranges marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and established under the aforesaid treaties from the mouth of Pigeon River to the northwesternmost point of the Lake of the Woods.

Article VI.—The boundary from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains.

In order to complete and render thoroughly effective the demarcation of the international boundary between the United States and the Dominion of Canada from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains, which boundary, according to existing treaties, runs due south

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from said northwesternmost point to the forty-ninth parallel of north latitude and thence along that parallel to the summit of the Rocky Mountains, and has been surveyed and charted and monumented as appears from the series of twenty-four sectional maps covering this portion of the boundary prepared and filed by the joint Commission appointed for that purpose by joint action of the two governments, 1872.

It is agreed that each of the High Contracting Parties shall appoint an expert geographer or surveyor as a Commissioner, and under the joint direction of such Commissioners lost or damaged monuments along the course of said boundary shall be relocated and repaired and additional monuments and boundary marks shall be established wherever necessary in the judgment of the Commissioners, to meet the requirements of modern conditions and to render more effective the demarcation of the existent boundary established under the treaty provisions and proceedings thereunder as aforesaid; and it is further agreed that in carrying out these provisions the said Commissioners shall observe the agreement stated in the protocol of the final meeting, dated May 29, 1876, of the joint Commission aforesaid, which is as follows :—

‘2. In the intervals between the monuments along the parallel of latitude, it is agreed that the line has the curvature of a parallel of 49° north latitude; and that such characteristic shall determine all questions that may hereafter arise with reference to the position of the boundary at any point between neighbouring monuments.

‘3. It is further agreed that, in the event of any of the said three hundred and eighty-eight monuments or marks being obliterated beyond the power of recognition, the lost site or sites shall be recovered by their recorded position relatively to the next neighbouring unobliterated mark or marks.’

It is further agreed that the said Commissioners shall mark upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose the entire course of the said boundary and the location of the boundary monuments and marks established along the course of said boundary, and two duplicate originals thereof shall be filed with each government, and said Commissioners shall also prepare in duplicate and file with each government a joint report describing in detail the work done by them in replacing and repairing lost or damaged monuments and the character and location of the several monuments and boundary marks placed by them along said boundary.

The line so laid down and defined shall be taken and deemed to be in the international boundary as defined by treaty provisions and the proceedings thereunder as aforesaid from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains.

Article VII.—The Boundary from the Summit of the Rocky Mountains to the Gulf of Georgia.

Whereas, by concurrent action of the Government of the United States and the Government of Great Britain in 1902 and 1903, Commissioners were designated to act jointly for the purpose of renewing lost or damaged monuments and placing additional monuments where such were needed throughout the course of the boundary along the 49th parallel of north latitude, from the summit of the Rocky Mountains westward to the eastern shore of the Gulf of Georgia, as defined in Article I of the Treaty of June 15, 1846, between the United States and Great Britain and as marked out by monuments along its course and laid down on a series of charts, seven in number, by a Joint Commission organized in 1858 for that purpose and composed of two Commissioners appointed one by each government, which charts, duly certified and authenticated in duplicate by said Commissioners, were approved and adopted by the two governments, as appears from the declaration in writing to that effect signed on February 24, 1870, at Washington by duly authorized Plenipotentiaries of the respec-

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tive governments, and it appearing that the remonumenting of this line by the Commissioners first above-referred to is now approaching completion;

It is hereby agreed by the High Contracting Parties that when such work is completed the entire course of said boundary showing the location of the boundary monuments and marks established along the course of the boundary, shall be marked upon quadruplicate sets of accurate modern charts prepared or adopted for that purpose, and the said Commissioners, or their successors, are hereby authorized and required to so mark the line and designate the monuments on such charts, two duplicate originals of which shall be filed with each government, and the said Commissioners, or their successors shall also prepare in duplicate and file with each government a joint report describing in detail the work done by them in replacing and repairing lost or damaged monuments and the character and location of the several monuments and boundary marks placed by them along said boundary.

The line so laid down and defined shall be taken and deemed to be the international boundary as defined and established by treaty provisions and the proceedings thereunder as aforesaid, from the summit of the Rocky Mountains to the eastern shore of the Gulf of Georgia.

Article VIII.—The boundary from the forty-ninth parallel to the Pacific Ocean.

The High Contracting Parties agree that each shall appoint without delay an expert geographer or surveyor to serve as Commissioners for the purpose of delineating upon accurate modern charts, prepared or adopted by them for that purpose, the international boundary line between the United States and the Dominion of Canada from the forty-ninth parallel of north latitude along the middle of the channel which separates Vancouver's Island from the mainland and the middle of the Haro Channel and of Fuca's Straits to the Pacific Ocean, as defined in Article I of the treaty of June 15, 1846, between the United States and Great Britain, and as determined by the award made on October 21, 1872, by the Emperor of Germany as arbitrator pursuant to the provisions of Articles XXXIV-XLIV of the treaty of May 8, 1871, between the United States and Great Britain, and as traced out and marked on a quadruplicate set of charts prepared for that purpose and agreed upon and signed by the duly authorized representatives of the respective governments, as appears from the protocol of a conference at Washington on March 10, 1873, between such representatives which was signed by them on that date, and as defined by them in a written definition of said boundary signed by them and referred to in and attached to said protocol, and it is agreed that the said Commissioners shall adopt in place of the curved line passing between Saturna Island and Patos Island as shown on said charts a straight line running approximately north and south through a point midway between the eastern point of Saturna Island and the western point of Patos Island and intersecting the prolongations of the two straight lines of the boundary now joined by a curved line. The entire line thus laid down shall consist of a series of connecting straight lines defined by distances and courses; and the Commissioners are authorized to select and establish such reference marks on shore as they may deem necessary for the proper definition and location on the water of the boundary aforesaid. A quadruplicate set of such charts, showing the lines so laid down and marked by them and the location of the several marks or monuments selected or established by them along its course shall be signed by them and two duplicate originals thereof shall be filed by them with each government, and the Commissioners shall also prepare in duplicate and file with each government a joint report, or reports, describing in detail the course of said line and the boundary marks and their location along its course.

The line so defined and laid down shall be taken and deemed to be the international boundary, as defined and established by treaty provisions and the proceedings thereunder as aforesaid, from the forty-ninth parallel of north latitude along the

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middle of the channel which separates Vancouver's Island from the mainland and the middle of Haro Channel and of Fuca's Straits to the Pacific Ocean.

Article IX.—General Provisions.

It is further agreed that each government shall pay the expenses of its own Commissioner and his assistants, and that the cost of marking and monumenting the boundary shall be paid in equal moieties by the two governments.

The Commissioners appointed under the provisions of this treaty shall proceed without delay to perform the duties assigned to them, but each Commisisoner shall, before entering upon his duties, make oath in writing that he will impartially and faithfully perform his duties as such Commisisoner.

In case a vacancy occurs in any of the Commissions constituted by this treaty, by reason of the death, resignation, or other disability of a Commissioner, before the work of such Commission is completed, the vacancy so caused shall be filled forthwith by the appointment of another Commissioner by the party on whose side the vacancy occurs, and the Commissioner so appointed shall have the same powers and be subject to the same duties and obligations as the Commissioner originally appointed.

It is understood that under the foregoing Articles the same persons will be appointed to carry out the delimitation of boundaries in the several sections aforesaid, other than section IV, unless the contracting Powers agree that for purposes of greater dispatch, or any other sufficient reason, two other persons should be appointed as Commissioners to do the work in any one or more of these sections.

If a dispute or difference should arise about the location or demarcation of any portion of the boundary covered by the provisions of this treaty and an agreement with respect thereto is not reached by the Commissioners charged herein with locating and marking such portion of the line, they shall make a report in writing jointly to both governments, or severally each to his own government, setting out fully the questions in dispute and the differences between them, but such Commissioners shall, nevertheless, proceed to carry on and complete as far as possible the work herein assigned to them with respect to the remaining portions of the line.

In case of such a disagreement between the Commissioners the two governments shall endeavour to agree upon an adjustment of the questions in dispute, and if an agreement is reached between the two governments, it shall be reduced to writing in the form of a protocol, and shall be communicated to the said Commissioners, who shall proceed to lay down and mark the boundary in accordance therewith, and as herein provided.

Article X.

This treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged in Washington as soon as practicable.

In faith whereof the respective Plenipotentiaries have signed this Treaty in duplicate and have hereunto affixed their seals.

Done at Washington the day of in the year of our Lord one thousand nine hundred and seven.

P.C. 1945 M.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Excellency the Administrator on the 1st April, 1908.

The Committee of the Privy Council have had under consideration a Despatch, dated 12th March, 1908, from His Majesty's Ambassador to the United States, stat-

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ing that he has laid the views concerning the Draft Treaty for the Delimitation of Boundaries, which were embodied in the Minute of Council of the 9th March, 1908, before the Secretary of State for the United States, and reporting certain suggestions which he has received from Mr. Root in response.

The Minister of the Interior, to whom the said Despatch was referred, submits that, referring to the suggestion of the Minute that the words "of their representatives," occurring in a certain place in Article 1, of the new draft, be omitted, Mr. Root suggests that the objection to these words might be met by the addition, after the word "representatives," of the words "authorized in that behalf," Mr. Root also suggests that, whereas the Minute proposed the 'President of the Hague Court' as the proper person to nominate the arbitrators, provided for, under certain contingencies, in Articles 1 and 2 of the draft, it would be better to provide for the arbitrators "to be appointed in the manner provided by Article 45 of the Hague Convention of 1907."

The Minister having carefully considered these suggestions respectfully recommends that they be concurred in, and that His Majesty's Ambassador to the United States be informed accordingly.

The Committee advise that Your Excellency be pleased to forward a copy hereof to His Majesty's Ambassador at Washington, for the information of the United States Government.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

810.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Excellency the Administrator on the 14th April, 1908.

On a report, dated 1st April, 1908, from the Minister of the Interior with reference to a Despatch from His Majesty's Ambassador at Washington, dated 30th October, 1907, submitting for the consideration of the Dominion Government a proposal by the United States Government that joint action be taken for the reservation of a strip of land sixty feet wide on each side of the Canada-Alaska Boundary line under similar conditions to that formerly established along the Mexican boundary line by Proclamation of the President of the United States.

The Minister of the Interior submits that in his opinion such a reservation will be of great service in the protection of the revenue and in the enforcement of the law generally, and he therefore recommends that with a view to the prevention of the erection of buildings or permanent structures or works on or close to the boundary line, except railways, aqueducts, bridges, canals, ditches and other works of a public character, and except buildings or permanent structures or works properly connected with such railways, aqueducts, bridges, canals and other works of public character, he be authorized to reserve the land within a strip sixty feet wide along the boundary line between Canada and Alaska from sale, lease and entry so far as the lands in question are vested in the Dominion.

The Minister points out that the title to wild lands adjacent to the Canada-Alaska boundary line is vested in the Dominion to the northward only of the sixtieth parallel of latitude. South of that parallel the lands lie in the province of British Columbia and the title to Crown lands is vested in the province. The Minister has reason to believe, however, that the province of British Columbia will be willing to give its co-operation.

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In connection with the subject the Minister of the Interior desires to suggest consideration of the possibility of making a similar reservation along other parts of the common boundary line, which, besides extensive stretches of water boundary, comprises some 1,900 miles on land.

Of the 1,300 miles or thereabouts from the Straits of Georgia to the Lake of the Woods, some 400 miles lie west of the summit of the Rocky Mountains. Along this distance the Minister understands that the Government of British Columbia has already reserved a strip 66 feet wide, wherever the land has not already been disposed of along the international boundary line. East of the Rocky Mountains, under the original surveys made by the Dominion Government road allowances were left adjoining the boundary. These road allowances are no longer under the control of the Dominion Government, having now passed under the jurisdiction of the provinces of Alberta, Saskatchewan and Manitoba.

The four provinces mentioned would doubtless agree to make the road allowances and the reservation permanent, though to secure that end concurrent agreement by the United States, or by the several states affected, to reserve a similar strip would appear to be desirable.

The Minister states that along the line from the St. Lawrence River to the St. Croix, the natural difficulty of enforcing the laws of the two countries along an extensive boundary line is enhanced by the fact that the property adjacent to the line, on both sides, has passed into private hands, and at many points there exist so-called 'line-houses' which stand close to or upon the line, and which in many instances, as has been charged, have been used for smuggling, or for evasion of law, to a serious extent. While it may not be practicable, by reason of the expense which it would involve, to apply the effective remedy of removing these houses altogether, it is a matter for consideration whether there are any steps which the two governments could take to prevent the erection in future of further houses of this kind.

The Committee concurring in the foregoing advise that His Excellency be moved to forward a copy hereof to His Majesty's Ambassador at Washington, with a request that he inform the Government of the United States that the Dominion Government is in full accord with the principle of their proposal, and will take steps to give effect to the reservation along the frontier of the Yukon Territory, and that he further call attention to the suggestions herein contained relative to other parts of the International Boundary line.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

P.C. 1722 M.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 25th November, 1907.

The Committee of the Privy Council have had under consideration a Despatch dated 30th October, 1907, from His Majesty's Ambassador at Washington with a copy of a note received from the United States Government proposing the reservation of a strip of land along the Alaskan frontier, under similar conditions to that established along the Mexican boundary line.

The Minister of Customs to whom the said Despatch was referred states that such a reservation would be of great advantage in the prevention of smuggling under cover of 'line stores' and other buildings adjoining the boundary, and would be in the best interests of both countries.

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The Minister recommends that His Majesty's Ambassador at Washington be advised that the Dominion Government is disposed, so far as within its power, to reach an understanding with the Government of the United States for the simultaneous reservation of a strip of land sixty feet wide on each side of the boundary, so that it may be kept free from obstruction, as a protection against smuggling goods between the two countries.

The Committee concurring in the aforesaid recommendation advise that His Excellency be moved to forward a copy hereof to His Majesty's Ambassador at Washington.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

